

## REMARKS

This is in response to the Office Action mailed on June 17, 2004, and the references cited therewith.

Claims 42-44, 51, 54, 59-60, 62, 64, 66, 67 are amended. Claims 41, 47-50, 57-58, 61 and 63 are canceled without prejudice or disclaimer; Applicant reserves the right to re-introduce these claims in one or more subsequent divisional or continuation patent applications. Claims 76 – 79 are added. As a result, claims 42-46, 51-56, 59-60, 62, 64-79 are now pending in this application.

### §102 Rejection of the Claims

Claims 48-49, 63 and 66 were rejected under 35 U.S.C. § 102(b) for anticipation by Verboven-Nelissen (U.S. 5,720,768). Claims 48-49 and 63 have been cancelled, thereby mooting the rejection of these claims. Claim 66 has been amended to incorporate all of the language of claims 63 and 64, in light of the Examiner's indication that claim 64 would be allowable if rewritten to incorporate all the language of its base claim and any intervening claims. Therefore, claim 66 is believed allowable. Accordingly, Applicant respectfully requests withdrawal of this rejection of claim 66.

### §103 Rejection of the Claims

1. Claims 55-56 and 69-70 were rejected under 35 U.S.C. § 103(a) for obviousness over Schloss (U.S. 6,539,260) in view of Scheiner et al. (U.S. 6,584,362). Applicant respectfully traverses.

Applicant's traversal is made on the grounds that the Scheiner et al. reference is disqualified by the American Inventors Protection Act (AIPA) of 1999 from being used as a reference against the present patent application under 35 U.S.C. § 102(e)/103. Applicant declares that, to the best of Applicant's knowledge, at the time the present invention was made, the present patent application and the application for the Scheiner et al. U.S. Patent No. 6,584,362 were owned by the same entity, that is, Cardiac Pacemakers, Inc. The application for Scheiner et al. U.S. Patent No. 6,574,510 was filed on Aug. 30, 2000, and did not publish until it issued as a patent June 24, 2003. Applicant believes, therefore, that the Scheiner et al. U.S.

Patent No. 6,84,362 is disqualified as a reference for purposes of section 102(e)/103(a) under 35 U.S.C. 103(c). Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of the present patent application insofar as it relies upon the Scheiner et al. reference.

2. Claims 50 and 67 were rejected under 35 U.S.C. § 103(a) for obviousness over Verboven-Nelissen. Claim 50 has been cancelled, thereby mooting this rejection of claim 50. Claim 67 has been amended to incorporate all of the language of claims 63 and 64, in light of the Examiner's indication that claim 64 would be allowable if rewritten to incorporate all the language of its base claim and any intervening claims. Therefore, claim 67 is believed allowable. Accordingly, Applicant respectfully requests withdrawal of this rejection of claim 67.

3. Claims 41-42, 47 and 57-61 were rejected under 35 U.S.C. § 103(a) for obviousness over Schloss.

Claims 41, 47, 57, 58, and 61 have been cancelled, thereby mooting this rejection of these claims.

Claim 42 has been amended to incorporate all of the language of claims 43 and 41, in light of the Examiner's indication that claim 43 would be allowable if rewritten to incorporate all the language of its base claim and any intervening claims. Therefore, claim 42 is believed allowable. Accordingly, Applicant respectfully requests withdrawal of this rejection of claim 42.

Claims 59-60 have been amended to incorporate all of the language of claims 62, 61, and 57, in light of the Examiner's indication that claim 62 would be allowable if rewritten to incorporate all the language of its base claim and any intervening claims. Therefore, claims 59-60 are believed allowable. Accordingly, Applicant respectfully requests withdrawal of this rejection of claims 59-60.

Allowable Subject Matter

Claims 43-46, 51-54, 62, 64-65 and 68 indicated to be allowable if rewritten in independent form including all of the language of the base claim and any intervening claims.

Claims 43 and 44 were rewritten in independent form including all the language of the base claim and any intervening claims. Accordingly, these claims are believed allowable. Because claims 45-46 depend from and incorporate all of the language of claim 44, which the

Examiner has indicated to be allowable in its present form, claims 45-46 are also believed to be allowable.

Claims 51 and 54 were rewritten in independent form including all the language of the base claim and any intervening claims. Accordingly, these claims are believed allowable. Because claims 52-53 depend from and incorporate all of the language of claim 51, which the Examiner has indicated to be allowable in its present form, claims 52-53 are also believed to be allowable.

Claim 62 was rewritten in independent form including all of the language of base claim 57 and intervening claim 61. Accordingly, claim 62 is believed allowable.

Claim 64 was rewritten in independent form including all of the language of base claim 63. Accordingly, claim 64 is believed allowable. Claims 65 and 67 were amended to incorporate all the language of claim 64, and are therefore also believed allowable.

In view of the above, Applicant respectfully requests allowance of claims 43-46, 51-54, 62, 64-65 and 68.

Claims 71-75 were allowed by the Examiner. Applicant gratefully acknowledges the allowance of these claims.

New Claims

Applicant has added new claims 76-79 to more particularly point out and distinctly claim certain subject matter. Applicant respectfully submits that these claims are fully supported by the present specification and are fully allowable in view of the remarks made above. Therefore, Applicant respectfully requests allowance of these claims.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date October 18, 2004

By   
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 18 day of October, 2004.

  
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